

clarify it. Plaintiff's document requests do not come close to asking for a production of this magnitude. To expedite discovery, plaintiff has been very careful to limit its production requests during the early stages of this case to the core issues.

Moreover, assuming these documents are responsive, there was nothing to keep Teva from producing documents on a rolling basis. Many defendants have done so. Teva's affidavit says that this scanning process was finished in December. Still plaintiff has not seen a single document.

Another excuse offered by Teva for not complying with plaintiff's discovery is that plaintiff did not make a motion to compel. But such a motion is not required for the production of discovery that is unobjectionable. As plaintiff has pointed out, its initial discovery hones in on the core of this case: the prices defendant charged for its drugs, the inflated prices it reported to the medical compendiums, defendant's knowledge of what it was doing, and the manner in which defendant kept the true prices of its drugs secret. Any discovery plaintiff sought in these requested categories is obviously relevant and should have been produced long ago.

Teva's final excuse for its non-participation in discovery appears to be that Teva is undermanned. Teva is in fact the world's biggest seller of generics. It has plenty of money and plenty of muscle. In any event, this is the first plaintiff has heard of this rationale and there appears to be no objective support it.

Teva's Reasons for Postponing Indefinitely its Deposition are Baseless.

Teva's two excuses for not appearing at its deposition are no better than its reasons for not participating in discovery to date. As far as plaintiff can make out, these reasons are: 1) plaintiff is trying to rush Teva into making admissions that it should not make; 2) plaintiff is

improperly trying to discover facts it should have had in its possession when it filed its complaint. Neither of these two rationales has the slightest merit.

Plaintiff is not trying to rush Teva into anything. Its discovery requests have been on file for over a year. And plaintiff filed its deposition notice on March 16, 2006 (Exhibit 1) which, with the added time plaintiff's counsel was willing to give Teva, provided Teva with 60 days to prepare for the deposition. This should have been more than adequate.

Indeed, the matters plaintiff seeks discovery of are not the type for which it takes months to prepare. Take, for example, Request No. 1 which asks for any evidence that is in Teva's possession that shows that retailers ever purchased its drugs for a price equal to or greater than Teva's published AWP. Plaintiff is attacked by the defendant for "cynically suggesting" that no time was needed for preparation because no such evidence exists. This was not a cynical suggestion. Everything plaintiff has seen indicates that Teva, as all the other defendants, has no evidence that its drugs were purchased by retailers at a price approaching the AWP. We simply want the defendant to say that it has no contrary evidence if that is the case. If it is not true, defendant is free to testify otherwise.

Request No. 2 asks for any information that Teva has that retailers were paying less than the published AWP for its drugs. This is the kind of evidence that a company secures by asking employees whose job it is to keep track of prices. It would be surprising if defendant had to comb through 186,000 documents to collect this information. Even if this were the case, we assume one purpose of all the scanning done by Teva was to put it into a position of being able to respond to plaintiff's discovery relatively expeditiously.

Request No. 3 asks for the prices Teva reported to the medical compendiums. This testimony will come from whoever's job it is to correspond with the compendiums, and the documents relating to it should be in that person's correspondence file.

Request No. 4 asks for testimony about whether Teva ever communicated with the compendiums telling them that the AWP's they were publishing for Teva were inaccurate. The person testifying on request number 3 should have this knowledge.

Request No. 5 asks for defendant's AMP's and seeks testimony on how they were calculated. Since the AMP's have to be reported to the Federal Government quarterly, Teva ought to be able to produce them with a push of a button. And surely it should not take long to find a person who knows how these AMP's are calculated.

Request No. 6, seeking evidence that the average wholesale price for Teva's drugs exceeded its AMP's, could conceivably require more time for Teva to identify a witness and assemble the required data; but Teva has made no showing that it could not do this in the time it was allotted.

In sum, the argument that Teva cannot prepare for its deposition without an indefinite delay is without basis.

Nor is Teva correct that Plaintiff is seeking discovery which it should have secured on its own. Teva, as the other defendants, has successfully hidden its true prices from Wisconsin and the public. Wisconsin has, nevertheless, secured plenty of evidence from third parties establishing Teva's wrongdoing which will surface when plaintiff amends its complaint. For example, see the document attached hereto as Exhibit 2 which is a spreadsheet (in progress) that shows the kinds of spreads Teva foisted on Wisconsin and other states in connection with some of its drugs. This spreadsheet shows that Teva systematically caused to be published AWP's that

were hundreds of percent (even a thousand percent) above what its actual selling prices of these drugs were.

The reason for going forward with the deposition is not that plaintiff is scrambling for material. It is because Judge Krueger has mandated that the plaintiff gather the most accurate information it can and that would surely include information in defendant's possession. Moreover, Judge Krueger nowhere suggested that if plaintiff has enough information to satisfy her ruling about amending the complaint discovery should grind to a halt.

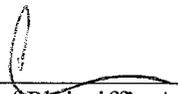
Finally, defendant contends in an affidavit of Mr. Pines that plaintiff refused to clarify as to which drugs Wisconsin sought information. This is untrue. Indeed, it does not make any sense. Wisconsin long ago served Teva with its targeted drug list. (See attached declaration and drug list.) (Exhibit 3) Plaintiff is unsure what Mr. Pines is talking about but surely he misunderstood something. (Plaintiff has tried to clarify this issue without result.) (See Affidavit of Plaintiff's counsel attached hereto.)

In sum, there is no good reason for Teva to ignore plaintiff's deposition notice.

CONCLUSION

For all the foregoing reasons Teva's motion for protective order should be denied.

Dated this 15th day of May, 2006.



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EXHIBIT 1

price pharmacies were actually paying for any of the targeted drugs in each year from 1993 to the present.

3. What contacts Teva, or its subsidiaries, have had with First Data Bank or the Red Book about any of the targeted drugs.
4. Whether Teva, or any of its subsidiaries, ever communicated to either First Data Bank or the Red Book that the published Average Wholesale Prices of their drugs were neither a price that was actually an average of wholesale prices, nor a price that was actually paid by the retail classes of trade and, if so, when such communications took place and of what they consisted.
5. The Average Manufacturer's Price (AMP) reported to the federal government of each of the targeted drugs in each year since 1993.
6. Any evidence which shows that the actual average wholesale price at which any of the targeted drugs sold in any given year was greater than the AMP.

The designated deponents shall bring with them 1) all evidence or information showing that any of the targeted drugs was sold at a price equal to or greater than the published AWP from 1993 to the present, 2) for the same period all evidence or information showing that actual average wholesale prices of its targeted drugs were less than the published AWP, 3) for the same time period any evidence of communications between Teva and the Red Book and/or First Data Bank about or concerning any of the targeted drugs, 4) for the same time period the reported AMPs of each targeted drug, and, 5) for the same time period any evidence defendant has showing that the actual average wholesale price of any of the targeted drugs was greater than the reported AMP.

Dated this 16th day of March, 2006.



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Targeted Drugs

March 16, 2006

Notice of Deposition of Defendant Teva Pharmaceuticals USA, Inc.

**Acetaminop
Amoxicilli
Carbamazep
Carbidopa
Cephalexin
Clonazepam
Diltiazem
Gemfibrozi
Glyburide
Lisinopril
Mirtazapin
Nabumetone
Nifedipine
Oxycodone
Propoxyph
Sulfametho**

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 3

received correspondence thereafter relating to the list. (See attached) I have attempted to find out from Mr. Pines on what basis he makes his statement about my refusal to clarify the drugs for which we were seeking information. I called him on Friday May 5, 2006 and Monday, May 8, 2006, both times leaving voice mails for him (he was on the phone) telling him that I did not make such a statement and asking him to call me to clarify this issue. He has never returned my phone call.

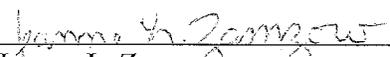
Dated this 12th day of May, 2006.



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Subscribed and sworn to before me
this 15th day of May, 2006.



Jeanne L. Zamzow
Notary Public, State of Wisconsin
My commission expires 06/14/09.

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July 13, 2005

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Re: State of Wisconsin v. Amgen, Inc., et al.
Dane County Case Number 04-CV-1709

Dear Chuck:

During our telephone conversation today we discussed the State of Wisconsin's discovery requests to Teva Pharmaceuticals USA, Inc. ("Teva") and Sicor, Inc. ("Sicor"). While my clients believe that the breath of the State's discovery is burdensome and premature given the pending Motions to Dismiss, we are willing to produce some responsive documents. You indicated that the State's priority is to receive the following information: AMP data, sales transaction data and communications between my clients and the various drug compendium. I will get back to you early next week with a realistic assessment as to how long it will take to produce this information for both Teva and Sicor.

In addition, you stated that you would check the list attached to your May 25 letter to make sure that all the drugs identified as "Targeted Drugs" are ones where there are over \$100,000 of sales in the State.

If you wish to discuss these matters any further, please contact me at (202) 408-9236.

Sincerely,


Elizabeth I. Hack

cc: David M. Stark, Teva Pharmaceuticals USA
Lester Pines, Esq.

- TEVA PHARMACEUTICALS USA, INC.

Drug

ACETAMINOP
ACYCLOVIR
ALBUTEROL
AMIODARONE
AMOXICILLIN
BUDEPRION
BUPROPION
CARBAMAZEP
CARBIDOPA/
CEPHALEXIN
CHLORHEXID
CIMETIDINE
CIPROFLOXA
CLONAZEPAM
DICLOFENAC
DICLOXACIL
DIFLUNISAL
DILTIAZEM
ENALAPRIL
ETODOLAC
FLUOCINONI
FLUOXETINE
FOSINOPRIL
GEMFIBROZI
GLYBURIDE
HYDROCODON
KETOCONAZO
LISINOPRIL
LOPERAMIDE
LOVASTATIN
METFORMIN
METHYLPHEN
METOCLOPRA
METOPROLOL
MIRTAZAPIN
MOEXIPRIL
NABUMETONE
NAPROXEN
NEOMYCIN
NIFEDICAL
NIFEDIPINE
NORTRIPTYL
OXYCODONE
PENICILLIN
PENTOXIFYL
PRENATAL
PROPOXYPHE
PROPRANOLO
RANITIDINE
SUCRALFATE
SULFAMETHO
TORSEMIDE
TRAMADOL

TEVA PHARMACEUTICALS USA, INC.

Drug

TRAZODONE
URSODIOL
VALPROIC

